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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2016

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Ex parte Montgomery County Department of Human Resources

PETITION FOR WRIT OF MANDAMUS

(In re: Montgomery County Department of Human Resources

v.

A.S.N. and J.E.C.)

**(Montgomery Juvenile Court, JU-11-548.05, JU-11-549.05, and
JU-11-550.05)**

THOMAS, Judge.

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In Montgomery County Department of Human Resources v. A.S.N., [Ms. 2140891, April 15, 2016] ___ So. 3d ___, ___ (Ala. Civ. App. 2016), this court reversed the judgments of the Montgomery Juvenile Court, acting through Judge Anita Kelley ("the juvenile judge"), declining to terminate the parental rights of A.S.N. and J.E.C. ("the parents") to their children and ordered that the juvenile judge terminate the parents' parental rights. The parents did not seek rehearing of this court's decision, and this court issued a certificate of judgment on May 3, 2016. On that same day, the juvenile judge entered judgments stating that the parental rights of the parents were terminated; however, the judgments did not include any factual findings and failed to award the Montgomery County Department of Human Resources ("DHR") permanent legal custody of the children.

On May 5, 2016, DHR filed this petition for the writ of mandamus in which it seeks an order directing the juvenile judge to amend her judgments terminating the parents' parental rights to include specific findings and to award DHR permanent legal custody of the children. In its petition, DHR argues that a juvenile court is required to "include in its judgment

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[terminating parental rights] a disposition as to the permanent legal custody of the children." S.H. v. Macon Cty. Dep't of Human Res., [Ms. 2140528, October 9, 2015] ___ So. 3d ___, ___ (Ala. Civ. App. 2015); see also Marshall Cty. Dep't of Human Res. v. M.B., 176 So. 3d 217, 219 (Ala. Civ. App. 2015), overruled on other grounds by S.H., ___ So. 3d at ___. DHR also argues, without citation to appropriate authority, that the juvenile judge should be ordered to make certain factual findings to support its judgments terminating the parents' parental rights, including, for example, that reasonable efforts leading toward reunification of the family had been made by DHR and had failed.

The juvenile judge answered the petition, in part, by entering amended judgments specifically awarding permanent legal custody of the children to DHR. DHR responded to the answer, indicating that the entry of the amended judgments had not mooted its petition because, it contended, the juvenile judge had failed to make specific findings to support the termination-of-parental-rights judgments.

"Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform,

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accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."'"

Ex parte A.M.P., 997 So. 2d 1008, 1014 (Ala. 2008) (quoting Ex parte Perfection Siding, Inc., 882 So. 2d 307, 309-10 (Ala. 2003), quoting in turn Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995)).

As noted above, the juvenile judge has amended the judgments terminating the parental rights of the parents to expressly award DHR permanent legal custody of the children, as required by Ala. Code 1975, § 12-15-320(b), which requires the juvenile court, once it has terminated parental rights, to place a child in the permanent legal custody of "the Department of Human Resources," another "public or private licensed child-placing agency," or the person who petitioned for the termination of parental rights, if that person is found to be a proper custodian. The juvenile judge's amended judgments resolve the main issue presented by DHR's petition. Therefore, as to that issue, we dismiss DHR's petition as moot.

We note that the juvenile judge indicates in her answer that the failure to include in the judgments a provision

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awarding permanent legal custody of the children to DHR was not "deliberate, purposeful, or planned." However, we would be remiss if we did not also note that the juvenile judge has, in the past, engaged in a pattern and practice of failing to comply with statutory requirements only to take steps to comply after DHR has filed a petition for the writ of mandamus with this court. In no less than five cases in the last year, DHR has sought this court's intervention to direct the juvenile judge to comply with the time requirements set out in Ala. Code 1975, § 12-15-320(a), and to either set a termination-of-parental-rights trial or to enter a termination-of-parental-rights judgment. See Ex parte Montgomery Cty. Dep't of Human Res. (No. 2150017, November 4, 2015), ___ So. 3d ___ (Ala. Civ. App. 2015) (table) (petition denied); Ex parte Montgomery Cty. Dep't of Human Res. (No. 2150016, November 4, 2015), ___ So. 3d ___ (Ala. Civ. App. 2015) (table) (petition denied); Ex parte Montgomery Cty. Dep't of Human Res. (No. 2140733, July 13, 2015), ___ So. 3d ___ (Ala. Civ. App. 2015) (petition denied); Ex parte Montgomery Cty. Dep't of Human Res. (No. 2140734, July 8, 2015), ___ So. 3d ___ (Ala. Civ. App. 2015) (petition denied);

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and Ex parte Montgomery Cty. Dep't of Human Res. (No. 2140735, July 6, 2015), ___ So. 3d ___ (Ala. Civ. App. 2015) (petition granted by unpublished order). All but one of those petitions had been mooted by the action of the juvenile judge upon her receipt of the petition; one petition was not mooted only because the juvenile judge thought that she required our permission or instruction to enter the requested termination-of-parental-rights judgment while the petition for the writ of mandamus was pending before this court. Deliberate or not, the juvenile judge's continued neglect of her duty to comply with the statutorily prescribed time requirements and to enter proper and compliant judgments unless and until threatened with the supervisory action of this court causes the members of this court great concern.

We turn now to DHR's second argument -- whether the juvenile judge was required to make specific factual findings to support the judgments terminating the parental rights of the parents.¹ We cannot agree with DHR that the juvenile

¹We realize that the juvenile judge has now entered final judgments in the underlying causes, that, as a result, DHR would have a remedy by way of appeal of those judgments, and, thus, that DHR is not entitled to a writ of mandamus on this issue. However, because we can easily address this issue and for purposes of judicial economy, we will consider this issue

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judge was required to make such findings in her judgments. Our supreme court previously concluded that the former Alabama Child Protection Act, Ala. Code 1975, former § 26-18-1 et seq., did not require written findings of fact in a judgment terminating parental rights; the court also noted that this court had, in construing the same statute, indicated that "detailed findings in a termination order are preferable, but are not required." Ex parte State Dep't of Human Res., 624 So. 2d 589, 593 (Ala. 1993) (citing M.J.G.L. v. State Dep't of Human Res., 587 So. 2d 1004 (Ala. Civ. App. 1991)). DHR has not provided, and this court cannot find, a provision in the now applicable Alabama Juvenile Justice Act, Ala. Code 1975, § 12-15-101 et seq., requiring that a termination-of-parental-rights judgment contain written findings of fact to support the judgment. Thus, DHR has not established that it has a clear legal right to the relief it seeks.

Because the juvenile judge has entered amended judgments awarding DHR permanent legal custody of the children at issue in the underlying causes, DHR's petition insofar as it seeks

in this opinion instead of requiring that DHR file an appeal of the amended judgments to challenge the failure of the juvenile judge to include written findings in the judgments.

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that very relief is dismissed as moot. DHR's petition insofar as it seeks an order directing the juvenile judge to include certain factual findings in her judgments terminating the parents' parental rights, is denied.

PETITION DISMISSED AS MOOT IN PART AND DENIED IN PART.

Pittman, Moore, and Donaldson, JJ., concur.

Thompson, P.J., concurs specially.

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THOMPSON, Presiding Judge, concurring specially.

I agree with the main opinion that Alabama Juvenile Justice Act ("the AJJA"), § 12-15-101 et. seq., Ala. Code 1975, does not require that a juvenile court make specific findings when entering a judgment terminating parental rights. However, I urge the legislature to amend the AJJA to require such findings, as do the statutes of a number of other states.²

²A number of states' statutes require the entry of specific findings of fact before a court may terminate a parent's fundamental right to his or her child. See, e.g., Ariz. Rev. Stat. § 8-538.A. ("Every order of the court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child or providing for protective supervision of the child shall be in writing and shall recite the findings on which the order is based"); Conn. Gen. Stat. Ann. § 45a-717(h) ("Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings"); Fla. Stat. § 39.809(5) (In an action involving the termination of parental rights, "[t]he judge shall enter a written order with the findings of fact and conclusions of law."); Ga. Code Ann. § 15-11-320(b) ("The court's order shall: (1) Contain written findings on which the order is based, including the factual basis for a determination that grounds for termination of parental rights exist and that termination is in the best interests of the child"); Haw. Rev. Stat. § 571-63 ("No judgment of termination of parental rights entered under sections 571-61 to 571-63 shall be valid or binding unless it contains a finding that the facts upon which the petition is based bring the child within such sections and have been proved by the evidence and that the adjudication of termination of parental rights is necessary for the protection

and preservation of the best interests of the child concerned and will facilitate the legal adoption of the child."); Idaho Code § 16-2010(1) ("Every order of the court terminating the parent and child relationship or transferring legal custody or guardianship of the person of the child shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction."); Ind. Code § 31-35-2-8(c) ("The court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)."); Iowa Code § 232.117.1. ("After the hearing is concluded the court shall make and file written findings."); Ky. Rev. Stat. Ann. § 625.090(6) ("Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either: (a) Terminating the right of the parent; or (b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state."); La. Child. Code Ann. art. 1037.B. ("When the court finds that the alleged grounds set out in any Paragraph of Article 1015 are proven by the evidentiary standards required by Article 1035 and that it is in the best interests of the child, it shall order the termination of the parental rights of the parent against whom the allegations are proven. The court shall enter written findings on both issues."); Mo. Rev. Stat. § 211.477.5 ("Orders of the court ... shall recite the jurisdictional facts, factual findings on the existence of grounds for termination and that the best interests of the child are served by the disposition stated in the order."); Nev. Rev. Stat. § 128.105.1. ("An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include [specific] finding[s]."); N.H. Rev. Stat. Ann. § 170-C:11.I. ("Every order of the court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction."); 23 Pa. Cons. Stat. § 2513(d) ("After hearing, which may be private, the court shall make a finding relative to the pertinent

Termination-of-parental-rights actions affect the fundamental constitutional rights of parents. See, e.g., J.C. v. State Dep't of Human Res., 986 So. 2d 1172, 1198-2000 (Ala. Civ. App. 2007); G.P. v. Houston Cty. Dep't of Human Res., 42 So. 3d 112, 122 (Ala. Civ. App. 2009). Adding a requirement in the AJJA that termination-of-parental-rights judgements contain specific findings would serve to protect the fundamental rights of parents whose parental rights are at issue.

In this state, the Alabama Workers' Compensation Act, § 25-5-1 et seq., Ala. Code 1975, requires that a trial court

provisions of section 2511 (relating to grounds for involuntary termination) and upon such finding may enter a decree of termination of parental rights."); 15 R.I. Gen. Laws § 15-7-7.1 ("The court shall make findings of fact and conclude all hearings on petitions for termination of parental rights within one hundred eighty (180) days after notice to the natural parents has been effectuated."); and Tenn. Code Ann. § 36-1-113 (k) ("The court shall enter an order [terminating parental rights] that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing."); see also In re T.T.S., [No. 113326, June 9, 2015] ___ P.3d ___, ___ (Okla. 2015) ("For the same reasons set out herein above, we conclude that in future proceedings initiated under 10A O.S. 2011 § 1-4-904(B) (5), a final order terminating parental rights shall identify the precise conditions the parent failed to correct.").

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make findings to support a workers' compensation judgment in order to ""ensure sufficiently detailed findings so that the appellate court can determine whether the judgment is supported by the facts."" Equipment Sales Corp. v. Gwin, 4 So. 3d 1125, 1129 (Ala. Civ. App. 2008) (quoting Farris v. St. Vincent's Hosp., 624 So. 2d 183, 185 (Ala. Civ. App. 1993), quoting in turn Elbert Greeson Hosiery Mills, Inc. v. Ivey, 472 So. 2d 1049, 1052 (Ala. Civ. App. 1985)). Such a requirement should be also imposed in termination-of-parental-rights actions subject to the AJJA, and an amendment to the AJJA imposing such a requirement should be simple and noncontroversial. A requirement that juvenile courts--charged with protecting our state's most vulnerable children--make factual findings would also expedite appellate review, thereby decreasing the time in which children are before the courts and assist in assuring that the courts are operating to protect the best interests of the children that are before the courts.

However, this court is bound by the precedent of our supreme court, and given that court's holding in Ex parte

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State Department of Human Resources, 624 So. 2d 589, 593 (Ala. 1993), I concur with the main opinion.